

BC2701075/TMS BC2701409/TMS	Link to Final Agency Decision 12-1902-19142-2
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STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE COMMISSIONER OF LABOR AND INDUSTRY

In the Matter of Bret E. Ekman, doing business as Ekman Roofing & Construction	FINDINGS OF FACT, CONCLUSIONS, AND RECOMMENDATION
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This matter came on for a prehearing conference on, at the Office of Administrative Hearings, 600 North Robert Street, St. Paul, Minnesota. The prehearing conference was held pursuant to a Notice of and Order for Hearing, Notice for Prehearing Conference, and Statement of Charges dated August 8, 2007.

Michael J. Tostengard, Assistant Attorney General, 445 Minnesota Street, Suite 1200, Saint Paul, MN 55101-2130, appeared on behalf of the Department of Labor and Industry (the Department). The Respondent, Bret E. Ekman, doing business as Ekman Roofing & Construction, did not appear in person or by counsel. The hearing was adjourned and the record was closed that day.

NOTICE

This Report is a recommendation, **not** a final decision. The Commissioner of Labor and Industry will make the final decision after reviewing the record and may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the Commissioner's decision shall not be made until this Report has been available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Nancy Leppink, Director of Legal Services, Minnesota Department of Labor and Industry, 443 Lafayette Road, Saint Paul, MN 55155, to ascertain the procedure for filing exceptions or presenting argument to the Commissioner.

The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes. If the Commissioner fails to issue a final decision within 90 days of the close of the record under Minn. Stat. § 14.61, this report becomes a final decision. In order to comply with Minn. Stat. § 14.62, subd. 2a, the Commissioner must then return the record to the Administrative Law Judge within 10 working days to allow the Judge to determine the discipline to be imposed.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

STATEMENT OF ISSUE

1. By entering into contracts exceeding \$15,000, did Respondent engage in unlicensed residential building contractor activities in violation of Minn. Stat. §§ 326.84, subds. 1 and 1a, and 326.842?

2. By advertising in the Austin Daily Herald that she was licensed by the Department when she was not, did Respondent engage in fraudulent, deceptive, and dishonest practices in violation of Minn. Stat. § 326.91, subd. 1(2) and Minn. R. 2891.0040, subp. 1B?

Based upon all of the files, records and proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On August 14, 2007, a copy of the Notice of and Order for Hearing, Order for Prehearing Conference, and Statement of Charges was sent to Respondent, at the address on file with the Department, 4997 Maki Road, Brookston, MN 55711. It was also sent to him at 1423 88th Avenue West, Duluth, MN 55808, which was apparently a prior address. Neither letter was returned to the Department. The Administrative Law Judge sent Respondent a letter on August 17, 2008, to the same two addresses. The letter addressed to Duluth was returned marked "Unable to Forward" and "Moved to Floodwood." The letter addressed to Brookston was not returned.

2. The Respondent failed to appear at the prehearing conference, did not obtain the ALJ's prior approval to be absent from the prehearing conference, did not file a Notice of Appearance, and it did not request a continuance or any other relief.

3. The Notice of and Order for Hearing and Notice of Prehearing Conference contained the following informational warning:

Respondent's failure to appear at the prehearing conference may result in a finding that the Respondent is in default, that the Department's allegations contained in the Statement of Charges may be accepted as true, and its proposed action may be upheld.

4. Because Respondent failed to appear at the prehearing conference or to contact the Administrative Law Judge prior to the prehearing conference, Respondent is in default.

5. Pursuant to Minn. R. 1400.6000, the allegations contained in the Notice of and Order for Hearing, Order for Prehearing Conference, and Statement of Charges are taken as true and incorporated by reference into these Findings of Fact.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Commerce are authorized to consider the charges against Respondent under Minn. Stat. §§ 326.91, 326.92, 45.027, subd. 1, 45.024, and 14.50.
2. Respondent received due, proper and timely notice of the charges against it, and of the time and place of the prehearing conference. Respondent is required to file and maintain an accurate address with the Department. This matter is, therefore, properly before the Commissioner and the Administrative Law Judge.
3. The Department has complied with all relevant substantive and procedural legal requirements.
4. Under Minn. R. 1400.6000, a contested case may be decided adversely to a party who defaults. On default, the allegations of and the issues set out in that Notice of and Order for Hearing or other pleading may be taken as true or deemed proved without further evidence.
5. Respondent is in default herein as a result of its failure, without the ALJ's prior consent, to appear at the prehearing conference.
6. Respondent failed to obtain the necessary permits from the City of Duluth for reroofing and for rebuilding a deck on the home of Linda Sorem and from the City of Cloquet for reroofing the home of Robert Pokela. Respondent thereby engaged in fraudulent, deceptive, and dishonest practices in violation of Minn. Stat. § 326.91, subd. 1(2) and Minn. R. 2891.0040, subp. 1H.
7. Respondent failed to complete the Sorem roof and deck contracts and the Sorem roof leaked. Respondent improperly installed an ice and water shield on the Pokela roof. Respondent thereby performed negligently or in breach of contract, so as to cause injury or harm to the public, in violation of Minn. Stat. § 326.91, subd. 1(4).
8. (4) has failed to reasonably supervise employees, agents, subcontractors, or salespersons, or has performed negligently or in breach of contract, so as to cause injury or harm to the public;
9. On April 25, 2007, after receiving complaints from Sorem and Pokela, the Department sent Respondent a letter requiring responses to the complaints. The Department has received no response. Respondent has thereby violated Minn. Stat. § 45.027, subd. 1a.
10. Disciplinary action against the Respondent is in the public interest.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED: that the Commissioner of Labor and Industry take adverse action against Respondent's license.

Dated: October 9, 2007

/s/ Steve M. Mihalchick
STEVE M. MIHALCHICK
Administrative Law Judge

Reported: Default; not recorded